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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
The Telephone Consumer Protection) CC Docket No. 92-90
Act of 1991)
To: The Commission

CONSOLIDATED REPLY COMMENTS OF HOUSEHOLD INTERNATIONAL

HOUSEHOLD INTERNATIONAL (hereinafter "Household"), by its attorneys, hereby submits its consolidated reply to certain comments filed in response to the Commission's Notice of Proposed Rulemaking (hereinafter "NPRM") initiating this proceeding.¹ For its consolidated reply, Household states as follows:

PROCEDURAL STATUS

1. The Commission initiated this proceeding for the purpose of adopting rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA").² The NPRM set May 26, 1992 as the cut-off date for the filing of comments in this proceeding. By that date, the Commission had received over 200 comments in response to the NPRM.³ Household was among the parties whose initial comments were timely filed. The NPRM also specified this date, June 25, 1992,

¹ Notice of Proposed Rulemaking in the Matter of the Telephone Consumer Protection Act of 1991, FCC 92-176, released April 17, 1992.

² 47 U.S.C. § 227.

³ Additional comments were received after the cut-off date.

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for the filing of reply comments. Accordingly, this consolidated reply is timely filed.

2. Given the multiplicity of comments, this consolidated reply will address only those comments which Household believes best exemplify the arguments regarding the critical issues in this proceeding. Therefore, any failure to directly rebut or support a specific argument by a particular commenter should not be construed as an acquiescence in, or opposition to, that argument by Household.

PREDICTIVE DIALERS DISTINGUISHED

3. Household believes that the Commission cannot fairly address the issues in this proceeding without further refining the terms "automatic telephone dialing systems" and "auto dialers." Certain of the initial comments filed in this proceeding provide substantial guidance as to the distinction between "predictive dialers" and "automatic dialer and recorded message players" ("ADRMP").⁴ Household utilizes only predictive dialers in its telecommunications activities. Accordingly, Household's comments may be construed only as support for certain uses of predictive dialers, and not as support for any use of ADRPMs.

⁴ Comments of Digital Systems International, Inc. ("Digital Systems"); D. F. King & Co., Inc. (King TeleServices); and Teknekron Infoswitch Corporation.

DEBT COLLECTION CALLS

Exemption of Debt Collection Calls

4. In its initial comments, Household supported the Commission's decision to include debt collection calls within the "business relationship" exemption of proposed rule Section 64.1100(c)(3). In addition, Household urged the Commission to strengthen the protection for debt collection calls by declaring them to also fall within the scope of the "prior express consent" exceptions set forth throughout proposed rule Section 64.1100. Upon reviewing certain comments, however, Household is constrained to urge the adoption of a specific, stand-alone, exemption for debt collection calls, which exemption should not be based upon any presently proposed exemption.

5. The plethora of comments the Commission received regarding debt collection calls demonstrates the sensitivity and importance of this issue to both consumers and businesses. One commenter went so far as to challenge the Commission's proposed inclusion of debt collection calls within the business relationship exemption by asserting that "a debtor who has failed to pay a debt is, in most cases, a person who no longer wishes to have a relationship with the creditor."⁵ That commenter presumably would also take the position that any prior consent involved in a debtor-creditor relationship can be revoked by a debtor "who no longer wishes to have a relationship" with a creditor to whom that debtor still has a legal obligation.

⁵ Comments of Consumer Action, p. 8.

6. This situation, and various other comments, demonstrate the appropriateness of the recommendation of the Utilities Telecommunications Council ("Council") that the Commission create a specific exemption from the operation of Section 64.1100 for debt collection calls.⁶ It would appear that, absent the creation of exemption such as proposed by the Council, the Commission and the courts will be called upon repeatedly to settle the inevitable arguments between debtors and creditors as to whether a "relationship" continues to exist or whether a "prior consent" remains in effect. It is imperative, therefore, that the Commission articulate and adopt a clear and specific exemption from the operation of Section 64.1100 for debt collection calls.

Conformity With Fair Debt Collection Practices Act

7. Household's initial comments alerted the Commission to the fact that it could not ignore the inherent conflict between the identification requirements of TCPA and the provisions of the Fair Debt Collection Practices Act ("FDCPA"). The various comments on this issue clearly justify Household's concerns in this regard.

8. The Commission must recognize that even the most legitimate, diligent and conservative utilization of predictive dialers for loan collection calls will inevitably result in the connection of an occasional call before a live operator is available to handle it. In such an instance, the creditor

⁶ Comments of Utilities Telecommunications Council, pp. 5-6.

initiating the call is prohibited by FDCPA from announcing its identity until it has identified the answering party as the debtor to whom the call is directed. Household, and other commenters who utilize predictive dialers to initiate debt collection calls, presently use an innocuous recorded message to request that the answering party hold the line pending intervention by a live operator.⁷ ⁸ Once the live operator takes over the call and determines the identity of the answering party, the live operator is able to provide responses, including identification, which comply with FDCPA.

9. The NPRM expressed the Commission's belief that "debt collectors should be able to draft identification messages that comply with both" TCPA and FDCPA.⁹ However, many commenters recognized that language conforming to both statutes may not be possible.¹⁰ While most commenters, including Household, supported a limited exemption to allow debt collectors to identify an answering party before providing caller identification, one commenter suggested "that where a message cannot be fashioned to

⁷ Digital Systems refers to such messages as "momentary hold cues."

⁸ If an answering party does not wish to comply with Household's request to hold, it may immediately terminate the call in question by simply hanging up the receiver.

⁹ NPRM, at fn. 23.

¹⁰ See, e.g., Comments of the Public Utility Commission of Texas.

meet the requirements of both laws, use of an auto-dialer should not be permitted."¹¹

10. Household urges the Commission to apply its particular expertise and experience regarding telecommunications practices to this problem, and to exercise its discretion to fashion an appropriate administrative remedy. To this end, Household again suggests a limited exemption from identification requirements for debt collection calls, which exemption should be coupled with requirements that predictive dialer debt collection calls utilizing momentary hold cues provide both for the immediate termination of such calls by the called parties, and for appropriate caller identification upon intervention by a live operator.

BUSINESS RELATIONSHIP EXEMPTION

11. Both TCPA and the rules proposed by the NPRM provide certain exemptions for calls initiated by the caller in reliance upon its "business relationship" with the called party. The Commission, however, seeks guidance as to "whether this exemption should encompass prior, current or both prior and current customers of a business."¹²

12. Certain commenters seek to limit the application of the business relationship exemption to parties with whom a caller has

¹¹ Id., at p. 6.

¹² NPRM, at para. 14.

had a transaction within a specified period of time.¹³ While Household agrees that there must be some chronological relationship between the exempting transaction and the initiation of a call, it does not believe it is reasonable to apply a single, inflexible time limit to all exempting transactions. Instead, Household suggests that callers should be allowed to make a reasonable determination as to the appropriate limit on the elapsed time by taking into account the nature of the previous transaction upon which it relies in initiating a call under the business relationship exemption.

TELEPHONE SOLICITATION TO RESIDENTIAL SUBSCRIBERS

13. In response to the TCPA's mandate, the NPRM sought comments concerning the possible need to adopt further procedures to protect residential telephone subscribers' privacy rights from intrusion by telephone solicitations to which they object. The NPRM specifically sought comments on the usefulness and desirability of the following five regulatory alternatives for restriction of such solicitations: (a) databases (national or regional); (b) network technologies; (c) special directory markings; (d) do not call lists (industry-based or company specific); and (e) time of day restrictions.

¹³ See, e.g., Comments of the Public Utilities Commission of Ohio, pp. 3-4, which comments recommend that the exempting transaction between the parties be required to have taken place within the previous twelve months.

14. The comments of various telephone companies make it abundantly clear that the use of network technologies is precluded by both the limitations of the North American Numbering Plan and the exorbitant costs which would be associated with the implementation of such technologies.¹⁴ Special directory markings were almost universally rejected both by consumers (who view such markings as themselves constituting invasions of privacy) and by businesses (which find the utilizations of such markings to be both difficult to maintain on a current basis and overly cumbersome to utilize). Household's review of the initial comments was unable to discern any significant support for time of day restrictions. In the end, the debate among the commenters seem to focus on the use of either databases or do-not-call or "suppression" lists.¹⁵

15. The main proponents of a national database were Consumer Action and LeJeune Associates of Florida. While Consumer Action volunteered to coordinate the initiation and operation of such a database, it cavalierly avoided the cost issue associated therewith by contending the cost would be borne by shifting the economic

¹⁴ See, e.g., Comments of the United States Telephone Association.

¹⁵ The Attorney General of Washington also proposed that the Commission consider adopting rules similar to various telemarketing prohibitions in effect in the State of Washington. One of those prohibitions, for example, prohibits any dialing of unlisted telephone numbers. Household believes these prohibitions are overly restrictive and fail to recognize marketplace realities. For example, a subscriber to an unlisted number consents to the dialing of that number when he provides it to another person or entity with whom he has a social or business relationship. That consent should take precedence over any presumption created by a prior decision to maintain an unlisted number.

burden to business users of the database. LeJeune, which proposes the use of its own services for establishment of a national database, also avoids any valid economic analysis of the costs associated with such a database. By contrast, King TeleServices sets forth specific costs estimates for a national database, which estimates are fully consistent with estimates previously developed by Household's in-house telecommunications staff. It is clear that any mandated use of a national database is effectively foreclosed by the enormous capital outlays required for its implementation and operation.

16. After reviewing all of the comments, and considering all of the arguments therein, Household remains convinced that the only practical means by which the Commission can provide additional protection to residential telephone subscribers is the utilization of company-specific suppression lists. If the Commission feels such additional protections are required, Household urges it to restrict its remedies to such suppression lists.

17. Most, if not all, of the comments addressed one or more of the alternatives put forth by the Commission.

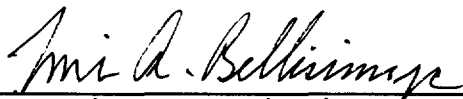
CONCLUSION

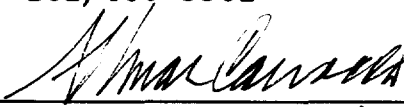
Household respectfully submits that the Commission should adopt 47 C.F.R. § 64.1100, as proposed in the NPRM, but, in its order adopting that rule, should clarify, in a manner consistent with Household's above suggestions, the basis for, and the extent of, the exemptions set forth in the rule. Household also submits

that the Commission either should determine that there is no need for further restrictions on telephone solicitations of residential subscribers, or, in the event the Commission makes a contrary determination, that the privacy of residential telephone subscribers can be best protected through the use of company specific do-not-call lists.

Respectfully submitted,

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June 25, 1992

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 1992, I mailed a copy of the foregoing "Consolidated Reply Comments of Household Internation" via first-class United States mail, postage prepaid, to the following:

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